

Application No.: 10/628,695
Filing Date: July 28, 2003

REMARKS

In response to the final Office Action mailed August 20, 2008, Applicants respectfully request the Examiner to reconsider the above-captioned Application in view of the foregoing amendments and the following remarks.

Summary of the Office Action

In the August 20, 2008 final Office Action, Claims 78-82 and 87-96 stand rejected, and Claims 42-45, 47-57, 63, 71, 72, 74, 75, 77, and 84-86 stand allowed. Claims 78-82, 87-93, 95, and 96 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,769,767 issued to Swab et al. (hereinafter “Swab”) in view of U.S. Patent No. 6,975,667 issued to Mattisson et al. (hereinafter “Mattisson”) and U.S. Patent No. 6,010,216 issued to Jesiek (hereinafter “Jesiek”). Claim 94 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Swab in view of Mattison, Jesiek, and U.S. Patent No. 5,606,743 issued to Vogt et al. (hereinafter “Vogt”)

Summary of the Amendment

By this paper, Applicants have canceled Claims 78-82 and 87-96. Accordingly, Claims 42-45, 47-57, 63, 71, 72, 74, 75, 77, and 84-86 are currently pending in the present Application. By this Amendment, Applicants respond to the Examiner’s comments and rejections made in the August 20, 2008 final Office Action. Applicants respectfully submit that the present Application is in condition for allowance.

Allowable Subject Matter

Applicants gratefully acknowledge the Examiner’s allowance of Claims 42-45, 47-57, 63, 71, 72, 74, 75, 77, and 84-86. Applicants appreciate the Examiner’s thorough examination of the present Application.

The Present Amendment Should Be Entered After Final

Applicants submit that the present Amendment should be entered after the issuance of the final Office Action of August 20, 2008 for the following reason.

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Applicants have not amended any of the allowed claims, but instead have merely canceled the rejected claims. Therefore, Applicant believes that the present Amendment should be entered after final because it merely accepts the allowed claims and cancels the rejected claims. *See* M.P.E.P. 2272 (“a showing under 37 CFR 1.116(b) is required and will be evaluated by the examiner for all proposed amendments after final rejection except where an amendment merely cancels claims”).

Accordingly, Applicants respectfully request that the Examiner consider and enter the present Amendment.

Traversal of Rejections under 35 U.S.C. § 103(a)

In the final Office Action, Claims 78-82, 87-93, 95 and 96 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Swab in view of Mattison and Jesiek. Further, Claim 94 stands rejected under Section 103(a) as being unpatentable over Swab in view of Mattison, Jesiek, and Vogt. Applicants respectfully traverse this rejection. However, in order to expedite the prosecution of this Application, Applicants have canceled Claims 78-82 and 87-96. Thus, the present rejection is now moot. Applicants expressly reserve the right to prosecute the original version of Claims 78-82 and 87-96 through continuation practice. Thus, the present rejections are now moot. Accordingly, Applicants respectfully request that the Examiner indicate that the present Application is in condition for allowance.

No Disclaimers or Disavowals

Although the present communication may include alterations to the Application or claims, or characterizations of claim scope or referenced art, Applicants are not conceding in this Application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this Application. Applicants reserve the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not

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reasonably infer that Applicants have made any disclaimers or disavowals of any subject matter supported by the present Application.

Co-Pending Applications of Assignee

Applicants wish to draw the Examiner's attention to the following co-pending applications of the present Application's assignee.

Serial Number	Title	Filed	Atty Docket No.
10/963,290	ACTUATOR CONFIGURATION FOR EYEGLASS WITH MP3 PLAYER	10-12-2004	NOCODE2.5C1DV2
10/628,847	ELECTRONIC EYEWEAR WITH HANDS-FREE OPERATION	07-28-2003	NOCODE2.005C3
11/417,854	ELECTRONIC EYEWEAR WITH HANDS-FREE OPERATION	05-03-2006	NOCODE2.5C3DV1
11/869,704	WIRELESS INTERACTIVE HEADSET	11-09-2007	NOCODE2.5CP2C1
11/022,367	DATA INPUT MANAGEMENT SYSTEM FOR WEARABLE ELECTRONICALLY ENABLED INTERFACE	12-22-2004	NOCODE2.007A
11/418,160	EYEGLASS WITH MP3 PLAYER	05-03-2006	OAKLY1.172C3
11/418,154	EYEGLASSES WITH WIRELESS COMMUNICATION FEATURES	05-03-2006	OAKLY1.278C2
11/352,938	EYEWEAR WITH DETACHABLE MODULE	02-13-2006	OAKLY1.271A

CONCLUSION

Applicants respectfully submit that the above rejections and objections have been overcome and that the present Application is now in condition for allowance. Therefore, Applicants respectfully request that the Examiner indicate that Claims 42-45, 47-57, 63, 71, 72, 74, 75, 77, and 84-86 are now acceptable and allowed. Accordingly, early issuance of a Notice of Allowance is most earnestly solicited.

Applicants respectfully submit that the claims are in condition for allowance in view of the above remarks. Any remarks in support of patentability of one claim, however, should not be imputed to any other claim, even if similar terminology is used. Additionally, any remarks referring to only a portion of a claim should not be understood to base patentability on that

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portion; rather, patentability must rest on each claim taken as a whole. Applicants respectfully traverse each of the Examiner's rejections and each of the Examiner's assertions regarding what the prior art shows or teaches, even if not expressly discussed herein. Although amendments have been made, no acquiescence or estoppel is or should be implied thereby. Rather, the amendments are made only to expedite prosecution of the present Application, and without prejudice to presentation or assertion, in the future, of claims on the subject matter affected thereby. Applicants also have not presented arguments concerning whether the applied references can be properly combined in view of, among other things, the clearly missing elements noted above, and Applicants reserve the right to later contest whether a proper reason exists to combine these references and to submit indicia of the non-obviousness of the claimed management system.

The undersigned has made a good faith effort to respond to all of the rejections in the case and to place the claim and drawings in condition for immediate allowance. Nevertheless, if any undeveloped issues remain or if any issues require clarification, the Examiner is respectfully requested to call Applicants' attorney in order to resolve such issue promptly.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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